IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1618 OF 2003
IN
PAUPER PETITION NO.8 OF 2003

Annapoorna @ Asha Jerry Serao & Anr. ...Plaintiffs
Vs.
Leonard Christopher Serao & Ors. ...Defendants

Mr.Jayesh Kocheta for Plaintiffs
Mr.K.B. Irani i/b. M/s. Madekar & Co.
for Defendant No.2
Mr.Niranjan Pandit with Ms. Trupty Kapadia with
Ms. Jyoti Tansale i/b. M.s Joy Legal Consultants for
Defendant Nos.1 and 3.

CORAM: SMT.R.S.DALVI,J.
DATED: 5TH AUGUST, 2005

P.C.

1. The Plaintiff claims to be the second wife of the father of Defendants 1,2 and 3. The Plaintiff claims an injunction restraining the Defendants from disposing of or creating third party rights in the movable and immovable properties shown in the Schedule Exh.-A to the Plaint. Plaintiff also claims maintenance of Rs.50000/- per month from the Defendants jointly and severally. The Plaintiff further claims accounts of the business of the joint family where she claims joint interest with the Defendants pursuant to her marriage with their father. The Plaintiff has also applied for appointment of Court Receiver.

2. The Advocate for the Plaintiff makes a statement that he presses only prayer (b) which is for maintenance at this stage. This Court has no jurisdiction to award maintenance.

3. Neverthless, to be entitled to maintenance from her step children the Plaintiff must primafacie show her marriage with their father. The Plaintiff claims to be married in a temple as per Hindu Vedic Rites. The Plaintiff has no certificate of marriage. The Marriage is not registered. The Plaintiff has not produced any documentary evidence to primafacie show her marriage with the father (deceased) of Defendants. She is stated to be married on 31st August, 2001.

4. The Plaintiff has relied upon her ration card issued on 12th December 2000 prior to the date of the marriage claimed by her, showing her to be residing with the father of the Defendants as Exhibit-D to the plaint. The ration card shows her name as if married to these Defendant’s father. However, admittedly she was not married to him on that date. Similar is her passport showing her name as such issued on 16th June 1994 even prior to the date of the death of the Defendant’s mother, the first wife of their father who is stated to have expired on 9th August, 1999. The documents annexed with the plaint do not show the marriage of the Plaintiff.

5. Upon my query as to whether there were any photographs showing the marriage, the Plaintiff has produced two photographs of herself with the deceased father of the Defendants. The photographs appear to be rather brand new. The photographs are of two different sizes. The Photographs are stated to be taken at different places. The dates of the photographs are not shown. Both the photographs show the Plaintiff and the deceased father of the Defendants standing or walking. The photograph do not even primafacie show the marriage between the parties on any given date. Since, the marriage is not primafacie shown, no maintenance as claimed can be ordered to be paid to the Plaintiff.

6. This Petition is filed as a Pauper Petition. The Plaintiff has valued the suit at Rs.50,000/-. No Court fee is paid upon her claim of Pauperism. Mr.Pandit drew my attention to the ration card of the Plaintiff Exh.B to the plaint which shows her income to be Rs.90,000/- p.a. This document therefore, shows that she is not indigent. She therefore, cannot be allowed to sue in pauperism as per prayer (a) in the suit.

7. The Plaintiff claims 1/4th share in the joint properties Exhibit-A to the plaint. Exhibit-A shows 13 immovable properties being 2 flats, 1 shop, 8 units and a open piece of land. It shows movable properties

being 8 vehicles, 5 Bank accounts, 1 locker, jewellery, shares and investments. The Plaintiff has valued the flat at Rs.25 lakhs. The suit is for the partition of the suit properties in which the Plaintiff claims 1/4th share. The Plaintiff has valued her claim for maintenance of Rs.50,000/-though the Plaintiff has claimed maintenance at Rs.50,000/- per month under prayer (e) to the plaint. The Plaintiff has not valued the other properties described in Exhibit-A to the Plaint.

8. The Plaintiff shall value all the properties in which she claims 1/4 share and pay advelorum Court fee upon such valuation within 4 weeks failing which the plaint is liable to be rejected under Order 7 Rule 11 of the C.P.C.

. Notice of Motion is dismissed. NOC.

. Two photographs produced by the Plaintiff, signed by the Plaintiff who is present in Court are taken on record.

(SMT.R.S.DALVI,J.)